

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR PETITIONER AND JOINT APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10703

United States Court of Appeals

For the
District of Columbia Circuit

FILED AUG 14 1950

DISTRICT OF COLUMBIA, *Petitioner*

v.

JACK K. McFALL, *Respondent*.

Joseph W. Stewart
CLERK

PETITION FOR REVIEW OF DECISION OF THE BOARD OF TAX
APPEALS FOR THE DISTRICT OF COLUMBIA

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QUESTIONS PRESENTED

1. The principal question presented is whether the Board of Tax Appeals for the District of Columbia has jurisdiction to hear and determine an appeal filed with said Board when the taxpayer has not paid the taxes involved under protest in writing.

2. Whether an individual is entitled to exemption from an excise tax for the issuance of a certificate of title to a motor vehicle purchased by him in New York enroute from Greece to his residence in the District of Columbia.

INDEX

SUBJECT INDEX

	PAGE
Jurisdictional Statement	1
Statement of the Case	2
Statutes Involved	4
Statement of Points	6
Summary of Argument	7
Argument:	
I. <i>The Board of Tax Appeals Lacked Jurisdiction</i>	8
II. <i>Respondent is not entitled to exemption from the excise taxes involved.</i>	15
Conclusion	18

CASES CITED

<i>Chicago Theological Seminary v. Illinois</i> , 188 U. S. 662, 672	15
<i>District of Columbia v. Morris</i> , 81 U. S. App. D. C. 330, 159 F. 2d 13	15
<i>Drury, Jean v. District of Columbia</i> , 67 Wash. Law Rep. 130	9, 10
<i>Duncan v. Baltimore & O. R. Company</i> , 68 W. Va. 293, 69 S. E. 1004	10

	PAGE
<i>Dyer, J. E. & Co. v. District of Columbia</i> , 73 App. D. C. 52, 115 F. 2d 945	9
<i>Fink v. Katz</i> , 68A. 2d 813	16
<i>Greenport Basin & Construction Co. v. United States</i> 269 F. 58	14
<i>Hebrew Home for the Aged v. District of Columbia</i> 79 U. S. App. D. C. 64, 142 F. 2d 573	15
<i>Kresge Dept. Stores v. District of Columbia</i> , 66 Wash. Law Rep. 1064	9
<i>Moore Ice Cream Co. v. Rose</i> , 289 U. S. 373	11, 12, 14
<i>Myers v. District of Columbia</i> , 72 Wash. Law Rep. 977,	13
<i>McCaughn v. Hershey Chocolate Co.</i> , 283 U. S. 488	11
<i>North Laramie Land Co. v. Hoffman</i> , 268 U. S. 276, 283.	11
<i>Northern Market Company of Wash. City v. District of Columbia</i> , 66 Wash. Law Rep. 1019	9
<i>Rosecrans, et al. v. Pacific Electric Ry. Co., et. al.</i> , 21 Cal. (2d) 602, 134 P. 2d 245, 247	17
<i>Rynex v. District of Columbia</i> , 72 App. D. C. 386, 114 F. 2d 842	9
<i>Saltonstall v. Birtwell</i> , 164 U. S. 54	14
<i>Story v. Snyder, et. al.</i> , --- U. S. App. D. C. ---	11
<i>Stromeyer & Arpe Co. v. District of Columbia</i> , 67 Wash. Law Rep. 721	9
<i>Watrous v. District of Columbia</i> , 77 U. S. App. D. C. 295, 135 F. 2d 654	9, 10
<i>Wells Lamont Corp. v. Bowles</i> , 149 F. 2d 364, 366	17
<i>West Texas Utilities Co. v. Nat'l Labor Relations Board</i> , --- U. S. App. D. C. ---	10, 11
<i>Wichita Railroad & Light Co. v. Public Utilities Commission</i> , 260 U. S. 48, 59	11, 15
<i>Wotan Theatre Corporation v. District of Columbia</i> , 76 Wash. Law Rep. 485	10

STATUTES CITED

Act of December 24, 1942, Sec. 5, 56 Stat. 1089, c. 826	10
District of Columbia Revenue Act of 1937, Title IX, as added by the Act of May 16, 1938:	
Sec. 3	2, 6, 8, 9, 12, 13, 15
Sec. 4	2
Sec. 5	10
Sec. 11	13
District of Columbia Revenue Act of 1949, Title III	4
Sec. 301	4, 8, 13, 15
Sec. 303	2, 5, 8, 9
Revenue Act of 1924, Title IX, 43 Stat. 366, 377	12
D. C. Code, 1940	
Sec. 47-2403	2, 6
Sec. 47-2404	2

INDEX—Continued

iii

PAGE

Sec. 47-2405 -----	10
Sec. 47-2411 -----	13
Title 47, ch. 24 -----	5
D. C. Code, 1940, Supp VII	
Sec. 47-801e -----	10
U. S. Code Congressional Service, 1949 -----	2, 4, 10

OTHER AUTHORITIES

Administrative Code of the City of New York (1943) -----	16
Baldwins New York Consolidated Laws (1948) -----	17
Law of Federal Income Taxation, <i>Mertens</i> , Vol. 9, Secs., 50.07, 50.08, 50.34 -----	12
Laws of New York:	
1934—Chap. 873 -----	17
1947—Chap. 278 -----	17
1948—Chap. 651 -----	17
1949—Chap. 454 -----	17
1950—Chap. 589 -----	17
State Tax Reporter, New York (CCH):	
Vol. 3, ¶ 96-900 -----	17
Vol. 4, ¶ 130-061, 130-062 -----	16

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10703

DISTRICT OF COLUMBIA, *Petitioner*,

v.

JACK K. McFALL, *Respondent*.

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This is a proceeding to review a decision of the Board of Tax Appeals for the District of Columbia, based upon its findings of fact and conclusions of law, cancelling an excise tax assessment for the issuance of title to a motor vehicle and holding that respondent is entitled to a refund thereof (App. 12).

In February, 1950, respondent applied to the District of Columbia authorities for a title certificate and registration of an automobile which had been previously registered in the State of New York. Respondent was notified of the amount of excise tax due for the issuance of such certificate of title and paid it on February 9, 1950, but did not pay it under protest in writing (App. 6, Finding 4). On

February 13, 1950, respondent filed an appeal with the Board of Tax Appeals (App. 1, 6, Finding 5). On February 17, 1950, after respondent had paid the tax and filed his appeal with the Board respondent addressed a letter to the Collector of Taxes in which he protested the payment of the tax previously paid (App. 6, Finding 4). The decision of the Board was entered on May 2, 1950 (App. 12). The petition for review by this Court was filed June 1, 1950 (Tr. 46).

The jurisdiction of this Court to review the decision of the Board of Tax Appeals is invoked under the provisions of Sections 3 and 4, Title IX of the District of Columbia Revenue Act of 1937, as added by the Act of May 16, 1938 (52 Stat. 371 c. 223, §§ 2403 and 2404, D. C. Code 1940) as amended, by authority of Section 303, Title III of the District of Columbia Revenue Act of 1949, _____ Stat. _____ (U. S. Code Congressional Service, 1949, p. 135).

STATEMENT OF THE CASE

Respondent is an individual. In 1946 he purchased a house situated in the District of Columbia where he and his wife lived until, having gone into the foreign service, he went to Montreal, Canada in the late fall of 1947 as United States Consul (App. 5, 14, 16). During the year 1946, prior to purchase of the aforesaid house, respondent lived at the Jefferson Hotel in the District of Columbia (Tr. 28). From Montreal respondent was transferred to the American Embassy in Greece where he served as First Secretary to the Embassy for about 9 months and was then, about November 1949, ordered home as Assistant Secretary of State in charge of Congressional Relations (App. 5).

Upon leaving Greece respondent ordered by mail an automobile from a dealer in New York City, to be delivered to him upon arrival in New York. He arrived in New York in November 1949 and remained for one day. The auto-

mobile was delivered to him in Yonkers, New York, before he came to the District and on the same day or on the next day he drove it to the District and resumed his dwelling in his house where he has since lived. Before going to Montreal respondent had leased his house in the District for a two-year term which expired at about the time he was called back to the United States (App. 5, 6, Findings 3, 4).

In the bill of sale for the automobile purchased in New York and in furnishing information for the New York State registration certificate respondent used his residence in the District of Columbia (2744 32nd Street, Northwest) (App. 13, 19, 20-22). He did not pay a sales or use tax to the State of New York or any political subdivision thereof (App. 5, 18, 19). Respondent endeavored to obtain New York State dealer's tags for the automobile he had purchased in order to drive it to the District of Columbia where he intended to register the vehicle. He was unable to purchase New York State dealer's tags, and therefore, purchased New York license tags for the automobile (App. 17) and in doing so gave as his "Residence" the address of "2744 32nd Street, Northwest, Washington, D. C." (App. 13, 19-22).

In February, 1950, respondent applied to the District of Columbia authorities for a certificate of title and registration of the aforesaid automobile in the District of Columbia, whereupon he was required to pay an excise tax for the issuance of the certificate of title which was paid on February 9, 1950 (App. 6).

On February 13 respondent filed an appeal with the Board of Tax Appeals for the District of Columbia from the aforesaid assessment of excise taxes and, thereafter, on February 17, 1950, addressed a letter to the Collector of Taxes in which he protested the payment of the tax. The letter was received by the Collector of Taxes on February 21, 1950 (App. 6). At the outset of the proceeding before the Board counsel for the District moved to dismiss the

petition on the ground that the Board did not have jurisdiction because the tax in question was not paid under protest in writing which motion was thereupon denied (App. 13). The Board of Tax Appeals after proceeding with a hearing on the merits and making certain findings of fact concluded as a matter of law that payment of the tax under protest was not required as a prerequisite to an appeal to the Board and that, if it were, the protest made by respondent 12 days *after* payment of the tax was a sufficient compliance with such prerequisite and, further, that at the time the automobile was purchased by respondent he was a non-resident of the District of Columbia and was not maintaining a residence in the District within the meaning of the statute involved. The Board thereupon further concluded as a matter of law that the tax appealed from was erroneously levied and that respondent was entitled to a refund thereof (App. 6, 7).

STATUTES INVOLVED

Title III of the District of Columbia Revenue Act of 1949 (Public Law 76—81st Congress, approved May 27, 1949, U. S. Code Congressional Service, 1949, pp. 134, 135)
 ----- Stat. -----; ----- D. C. Code, 1940:

“Section 301. An Act known as the ‘District of Columbia Traffic Act, 1925’, approved March 3, 1925, as amended, is hereby further amended by adding to section 6 thereof the following subsection:

‘(j) In addition to the fees and charges levied under other provisions of this Act, there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer in the District, and for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case

of sale or resale thereof, at the rate of 2 per centum of the fair market value of such motor vehicle or trailer at the time such certificate is issued, as determined by the Assessor of the District of Columbia or his duly authorized representatives. As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued. The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

* * * *

"(2) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District. * * *"

* * * *

"Sec. 303. Any person aggrieved by the assessment of any tax imposed by this title may, within ninety days from the date the person entitled to a certificate of title was notified of the amount of such tax, appeal to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 3, 4, 7, 8, 9, 10, and 11 of title IX of the Act entitled "An Act to amend the District of Columbia Revenue Act of 1937, and for other purposes", approved August 17, 1937, as amended, and as the same may hereafter be amended. * * *"

Title IX of the District of Columbia Revenue Act of 1937 as added by the Act of May 16, 1938, 52 Stat. 370 c. 223 (Title 47, ch. 24, D. C. Code, 1940):

"Sec. 3. Any person aggrieved by any assessment by the District against him of any personal-property, inheritance, estate, business-privilege, gross-receipts, gross-earnings, insurance-premiums, or motor-vehicle-fuel tax or taxes, or penalties thereon, may, within ninety days after notice of such assessment, appeal from such assessment to the board, provided such person shall first pay such tax, together with penalties and interest due therein, to the collector of taxes of the District of Columbia under protest in writing. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect of such taxes. The board shall hear and determine all questions arising on said appeal and shall make separate findings of fact and conclusions of law, and shall render its decision thereon in writing. The board may affirm, cancel, reduce, or increase such assessment. * * * " [Sec. 47—2403, D. C. Code, 1940.]

STATEMENT OF POINTS

1. The Board of Tax Appeals for the District of Columbia erred as a matter of law in concluding that payment of the excise tax imposed by Title III of the District of Columbia Revenue Act of 1949 was not required to be made under protest as a prerequisite to an appeal to the Board.
2. The Board of Tax Appeals for the District of Columbia erred in concluding as a matter of law that if a protest of payment of an excise tax under Title III of the District of Columbia Revenue Act of 1949 was necessary, a protest made long after payment of the tax and after an appeal had been made to said Board was a sufficient compliance with such prerequisite.
3. The Board erred in not concluding as a matter of law that it did not have jurisdiction of the appeal.
4. Respondent was maintaining a residence in the District of Columbia at the time the automobile was purchased

and the Board of Tax Appeals erred in concluding, as a matter of law, to the contrary.

SUMMARY OF ARGUMENT

The Board of Tax Appeals lacked jurisdiction of the appeal because, although the tax was paid, the tax was not paid under protest in writing as required by the statutes involved. The Board's determination that payment of the tax under protest is not required as a prerequisite to an appeal to it is contrary to the plain language of the statutes and, with one exception, the Board's prior decisions on the question. The Board's additional conclusion that if payment of the tax under protest is necessary, a written protest made by respondent 12 days after payment and four days after appeal was sufficient compliance with such prerequisite, is also in direct conflict with the Board's governing statute and its early decisions construing same. A later decision of the Board, holding that protest after payment was sufficient is contrary to the statute, is based upon inapplicable decisions, and is likewise erroneous. However, the case was decided on the merits for the District and no appeal was taken. The Board did not have jurisdiction in the case at bar and, therefore, the District's motion to dismiss should have been granted.

In assuming jurisdiction over this case and deciding it on its merits, the Board of Tax Appeals overlooked or ignored well-established rules of law that tax-exemption statutes must be strictly construed and a taxpayer seeking exemption has the burden of proof. In this case the conditions of exemption were that the respondent be a non-resident of the District and, further, that the motor vehicle be purchased or acquired by him prior to coming into the District and "establishing" or "maintaining" a residence in the District. The Board's conclusion that respondent was a non-resident and was not maintaining a residence in the District within the meaning of the statute is not based upon competent or adequate evidence and is not sufficient to support the exemption, and further, it is erroneous because the Board

made no finding or conclusion that respondent had not established a residence in the District. According to the evidence and the Board's findings of fact, insofar as they go, respondent not only established but maintained a residence in the District prior to purchasing the motor vehicle involved and, accordingly, he was not exempt from the tax imposed for the issuance of the original certificate of title for it under Sec. 301, Title III, of the 1949 Act.

ARGUMENT

I

The Board of Tax Appeals Lacked Jurisdiction.

The tax involved is an excise tax assessed under the provisions of Sec. 301, Title III, of the District of Columbia Revenue Act of 1949, *supra*, for the issuance of a certificate of title for respondent's motor vehicle.

Sec. 303, Title III, of that Act provides that any person aggrieved by the assessment of any tax under the provisions of that title may, within 90 days from the date the person entitled to the certificate of title was notified of the amount of the tax, appeal to the Board of Tax Appeals for the District of Columbia "in the same manner and to the same extent as set forth in sections 3, 4, 7, 8, 9, 10, and 11 of Title IX of the Act entitled 'An Act to amend the District of Columbia Revenue Act of 1937, and for other purposes', as amended." Sec. 3 of Title IX of the District of Columbia Revenue Act of 1937, as amended, *supra*, authorizes an appeal to the Board of Tax Appeals, *provided* the person aggrieved *shall first pay the tax under protest in writing*.

In the present case respondent was notified of the amount of the tax assessed and the tax was paid on February 9, 1950. On February 13, 1950, the respondent appealed to the Board (App. 6). Subsequently, on February 17, 1950, respondent addressed a letter to the Collector of Taxes in which he protested the payment of the tax, which payment

he had previously made on February 9th (App. 6). This plainly did not comply with the statutory requirements. The Board of Tax Appeals had previously held, in some of its earliest decisions, that in order to give the Board jurisdiction it must be affirmatively shown that the entire tax was paid under protest in writing. See *Jean Drury v. District of Columbia*, 67 Wash. Law Rep. 130; *Northern Market Company of Washington City v. District of Columbia*, 66 Wash. Law Rep. 1019; *Kresge Dept. Stores v. District of Columbia*, 66 Wash. Law Rep. 1064; *Strohmeyer & Arpe Co. v. District of Columbia*, 67 Wash. Law Rep. 721. Although the precise question has not been passed upon by this Court, the Court's attention is invited to *Rynex v. District of Columbia*, 72 App. D. C. 386, 114 F. 2d 842, *J. E. Dyer & Co. v. District of Columbia*, 73 App. D. C. 52, 115 F. 2d 945, and *Watrous v. District of Columbia*, 77 U. S. App. D. C. 295, 135 F. 2d 654.

Notwithstanding the statutory requirements and the Board's prior decisions on this question, however, the Board concluded as a matter of law that "Payment under protest is not required as a prerequisite to an appeal to this Board" from the excise tax imposed by Title III of the District of Columbia Revenue Act of 1949, *supra* (App. 6). The Board, in a memorandum (App. 8), pointed out that Sec. 303 of the 1949 Act, *supra*, provides for appeals to the Board "in the same manner and to the same extent" as set forth in the enumerated sections of the 1937 Act but concluded that the "manner and extent" of an appeal are one thing and the compliance with "conditions precedent" is quite another. While this may be true under certain circumstances, it is obvious that Congress intended, by use of the term "in the same manner and to the same extent" to require appeals to the Board to be handled under the same conditions and procedure as any other appeal. The word "manner" literally means the handling of a thing and includes, of course, conditions under which appeals shall be

handled. *Duncan v. Baltimore & O. R. Co.*, 68 W. Va. 293, 69 S. E. 1004. Congress used the same language in providing for appeals to the Board from final determinations of sales and use taxes under the 1949 Act.¹ Congress also used the same language in providing for appeals to the Board from real property tax assessments where such property is deemed to be exempt but specifically provided that "payment of the tax shall not be prerequisite to any such appeal".² Furthermore, and most significant, is the fact that Congress used the same words, "in the same manner and to the same extent", in providing for appeals to the Board from other real property tax assessments in the same title of the same statute which created the Board of Tax Appeals.³ In the Board's first reported decision (November 22, 1938) involving its jurisdiction over appeals from real property tax assessments it was held that in order to give the Board jurisdiction it must be affirmatively shown that the entire tax was *paid under protest in writing*. *Jean Drury v. District of Columbia*, 67 Wash. Law Rep. 130. In the latest reported decision of the Board (March 12, 1948) involving real property tax assessments the Board felt it necessary to make a finding of fact that the tax was paid under protest in writing although that was not a question in the case. *Wotan Theatre Corporation v. District of Columbia*, 76 Wash. Law Rep. 485. If the finding had not been prerequisite to show the Board's jurisdiction, of course it would not have been made.

This Court has held that the Board of Tax Appeals is an administrative agency. *Watrous v. District of Columbia*, 77 U. S. App. D. C. 295, 135 F. 2d 654. In *West Texas Utilities Company v. National Labor Relations Board*, ____ U. S. App. D. C. ____ (No. 10465, decided July 10, 1950), this

¹ Secs. 141 and 223, U. S. Code Congressional Service, 1949 pp. 127, 134.

² Sec. 5, Act of December 24, 1942, 56 Stat. 1089, c. 826 (Sec. 47-801e, D. C. Code, 1940, Supp. VII).

³ Title IX of the District of Columbia Revenue Act of 1937, *supra*, Sec. 5 (Sec. 47-2405, D. C. Code, 1940).

Court pointed out that the Supreme Court has admonished courts many times to give "great weight" to an agency's interpretation of its governing statute. This is particularly true when it involves a contemporaneous construction of a statute which has continued for many years and the specific language in question has been frequently used in related statutes enacted subsequent to such construction, as is true in the present case. Since this rule is applicable with respect to interpretation of doubtful or ambiguous statutory provisions [*McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, 492, 51 S. Ct. 510, 75 L. Ed. 1183; *West Texas Utilities Company v. National Labor Relations Board*, *supra*], it certainly should not be applied with less weight in cases such as the present where the statutory provisions are plain and unambiguous. All persons are charged with knowledge of the provisions of statutes and must take note of the procedure adopted by them. *North Laramie Land Company v. Hoffman*, 268 U. S. 276, 283, 45 S. Ct. 491, 69 L. Ed. 953. An administrative agency must pursue the procedure and requirements prescribed, and show a substantial compliance therewith, to give validity to its action. *Wichita Railroad & Light Company v. Public Utilities Commission*, 260 U. S. 48, 59, 43 S. Ct. 51, 67 L. Ed. 124. Inasmuch as it is not within the judicial function to rewrite a statute so that it will authorize what the court thinks should be authorized [*Story v. Snyder, et al.* ____ U. S. App. D. C. ____, No. 10202, decided June 12, 1950], it certainly is not within the power of the Board of Tax Appeals for the District of Columbia, an administrative agency, to do so.

In its memorandum (App. 9) the Board admits that its interpretation of the statute governing appeals to it is "rather narrow and technical". The Board does not mention or discuss its prior decisions on the matter, except in one instance as will hereinafter appear, but relies upon the case of *Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 53 S. Ct. 620, 77 L. Ed. 1265, for supporting its view that the require-

ment of paying taxes under protest has its roots in ancient customs and practices no longer required and, obviously, concluding therefrom that payment of taxes under protest [in writing] as a condition of appeal to the Board is no longer necessary. That case, however, is neither applicable nor in point; it involved a suit to recover federal taxes which had been paid under threat of distraint but without protest. The principal question in the case was whether the common law rule, requiring payment of taxes under duress as well as under protest, which had been abolished by the Revenue Act of 1924 as to federal tax payments, applied in a case where taxes were paid before but suit was filed after enactment of the Act. The Court said (p. 377): "We think the intention of the Congress was to remove the requirement of protest in any suit thereafter brought, irrespective of the date of the underlying payment." In this connection it is important to note:

(1) The *Moore Ice Cream Co.* case was decided May 8, 1933.

(2) The Board of Tax Appeals of the United States (now the Tax Court) was created by the Revenue Act of 1924, Title IX, 43 Stat. 336. Congress has never prescribed that federal taxes must be paid prior to an appeal to that tribunal, much less that they be paid under protest in writing. See Vol. 9, *Law of Federal Income Taxation*, Mertens, Secs. 50.07, 50.08, 50.34.

(3) When the Board of Tax Appeals for the District of Columbia was created by Title IX of the District of Columbia Revenue Act of 1937, *supra*, on May 16, 1938, Congress prescribed that appeals to it could be made within the prescribed periods of time, *provided* the person aggrieved shall *first* pay such tax, etc., *under protest in writing*. The only exception made by Congress relates to appeals from assessments on real property deemed to be exempt, as pointed out above.

The Board further seeks to justify its action by concluding that Sec. 3 of the statute governing appeals to it "contemplates written notice of assessment" being "mailed to the taxpayer" (App. 8); that Sec. 301 of the 1949 Act, *supra*, does not contemplate the mailing of a written notice to the taxpayer; that it may be *assumed* that no formal assessment is made and mailed to the taxpayer, and that the tax is paid on an over-the-counter basis, with an absence of conditions and circumstances conducive to a written protest to accompany payment. Such conclusions and assumptions have no basis in the statutes or evidence. Neither Sec. 3 of Title IX of the 1937 Act, *supra*, nor Sec. 11 thereof [Sec. 47-2411, D. C. Code, 1940] confines the manner of notice to "mailing", but obviously permit the giving of notice of an assessment by other means, such as delivery in person to the taxpayer. Although Sec. 301 of the 1949 Act, *supra*, does not provide for the mailing of a notice to the taxpayer, as stated by the Board, Sec. 303 of said Act, *supra*, provides for notifying the taxpayer of the amount of the tax, without specifying whether it shall be by mailing a notice, by handing it to him, or by other means. Such matters, including the filing of a written protest at time of payment, may be handled either by mail or, as the Board says, "over-the-counter."

Also, the Board's assumption that no formal assessment is made under Sec. 301 of the 1949 Act is clearly erroneous. That section expressly refers to the "Assessor" and gives him authority to obtain information which forms the bases of assessments thereunder.

The Board further concluded as a matter of law that if payment of the tax under protest [in writing] were required, the protest made by respondent "12 days after payment of the tax", which was four days *after* the appeal was filed with the Board, was a "sufficient compliance with such prerequisite" (App. 6). This ruling is clearly contrary to the plain language of the statute which requires, *before* ap-

peal, payment of the tax under protest in writing. The ruling is also contrary to the Board's prior decisions, except *Myers v. District of Columbia*, 72 Wash. Law Rep. 977 (September 7, 1944), which was decided on the merits for the District and, therefore, the District did not petition for review thereof by this Court. The Board's decision in the *Myers* case was based upon the *Moore Ice Cream Co.* case, *supra*, and two others of similar nature. As pointed out above, the latter case is not applicable or in point in any respect.

Saltonstall v. Birtwell, 164 U. S. 54, 17 S. Ct. 19, 41 L. Ed. 348, cited by the Board, involved the principal question whether a written protest of the payment of certain duties was timely and sufficient when the protest was made after payment. The basic statute provided that the duties could not be recovered unless a protest in writing was made and delivered at or before payment. An amendment provided, however, that no recovery should be allowed unless a "protest and appeal" was taken as prescribed. The Court concluded, under the amendment, that the protest need not be made at any particular juncture "if made before the appeal" (U. S. p. 69, L. Ed. p. 353).

In *Greenport Basin & Construction Co. v. United States*, 269 F. 58, affirmed 260 U. S. 512, the remaining authority relied upon by the Board, one of the contentions was that the taxes there involved were not paid under protest and duress. The Court, however, after quoting the statutory provisions involved, stated that, under the statute, the refund sought was "a matter of right, without proof of duress or protest" (p. 59).

It will thus be seen that none of the authorities relied upon by the Board is applicable or in point.

In view of the foregoing, the Board of Tax Appeals clearly did not have jurisdiction of respondent's appeal, and the District's motion to dismiss (App. 13), should have been granted.

II

Respondent Is Not Entitled to Exemption From the Excise Taxes Involved.

It is well settled that tax-exemption statutes are strictly construed and that any doubt is fatal to the claim. *Hebrew Home for the Aged v. District of Columbia*, 79 U. S. App. D. C. 64, 142 F. 2d 573; *Chicago Theological Seminary v. Illinois*, 188 U. S. 662, 672, 47 L. Ed. 641, 648. And the burden of proof, of course, is on a taxpayer who seeks to have a tax assessment cancelled. *District of Columbia v. Morris*, 81 U. S. App. D. C. 356, 357, 159 F. 2d 13, 14.

In assuming jurisdiction over this appeal and deciding the case on its merits, the Board of Tax Appeals has completely overlooked, or ignored, the foregoing well-established rules of law. Without competent or adequate evidence, and therefore without findings of fact to support it, the Board not only concluded as a matter of law that respondent was a non-resident of the District but also concluded that he was not maintaining a residence in the District within the meaning of the statute involved. The Board made no finding of fact or conclusion of law as to whether respondent had established a residence in the District within the meaning of said statute, although Finding of Fact No. 2 (App. 5) plainly shows that respondent did so in 1946, long prior to enactment of the statute involved. There was an absence of appropriate findings of fact upon which the Board could base its conclusions of law and decision. See, e.g., *Wichita Railroad & Light Company v. Public Utilities Commission*, *supra*, at p. 59, U. S.; and, also, Sec. 3, Title IX, of the 1937 Act, *supra*, requiring the Board to make findings of fact.

We agree with the Board's view that the words "non-residents" and "residences", as used in Title III of the statute involved, have reference to an actual abiding place

rather than domicile (App. 11). See, e.g., *Fink v. Katz*, 68 A. 2d 813. But the question involved as to exemption from taxation under Title III of the statute is not confined to a determination of whether the taxpayer is or is not a "non-resident". The conditions of exemption require, further, that the motor vehicle or trailer shall have been purchased or acquired by the "non-resident" *prior* to coming into the District and "establishing" or "maintaining" a residence in the District. In the present case, assuming that respondent is a "non-resident" of the District within the ordinary meaning of the word, he nevertheless did not purchase the motor vehicle in question *prior* to coming into the District and "establishing" or "maintaining" his residence here. Respondent established his residence in the District, by the purchase and use of a permanent residence, in 1946; he maintained such residence in the District during his temporary absence from the United States even though he had "leased" it; and he used the address of such residence in purchasing the motor vehicle involved and obtaining registration therefor in New York (App. 19-22). Although respondent alleged in his petition filed with the Board that he paid the "New York Sales Tax" (App. 2), the Bill of Sale for the automobile (App. 21) did not so indicate, and respondent failed to adduce competent evidence in this respect (App. 5, Finding 3), although given opportunity to do so by the Board (App. 18, 19). It was obviously the opinion of the Board of Tax Appeals that respondent avoided paying the New York City sales tax by using his Washington, D. C., residence address (App. 18). At the time respondent purchased the automobile involved, New York City imposed retail sales taxes on sales of tangible personal property, including automobiles,⁴ by authority of

⁴ Title N, Chap. 41, p. 2100, Administrative Code of the City of New York (1943); Vol. 4, State Tax Reporter, New York, Pars. 130-061, 130-062, published by Commerce Clearing House, Inc.

laws enacted by the State Legislature.⁵ Sec. 1 of the enabling Act of 1934, as well as the amending Act of 1949 (which became law April 7, 1949), provided that such Acts should "not authorize the imposition of a tax on a non-resident of such city" or on account of "retail sales or other transactions actually made or consummated within such city by a non-resident while in such city."⁶ It is thus apparent that respondent, by using his District residence in purchasing the automobile involved, avoided the New York City sales tax, as the Board realized (App. 18).

It seems unnecessary to unduly lengthen this brief by giving dictionary definitions and citing many court decisions as to the general meaning of the words "establish" and "maintain". In the recent case of *Wells Lamont Corporation v. Bowles* (U. S. Emergency Court of Appeals, 1945), 149 F. 2d 364, 366 [cert. den. 326 U. S. 730, rehearing den. 326 U. S. 808] it was stated:

"* * * To establish is to make stable or firm; to fix in permanence and regularity, to settle or secure on a firm basis, to settle firmly or to fix unalterably."

And in *Rosecrans, et al. v. Pacific Electric Ry. Co., et al.*, 21 Cal. (2d) 602, 134 P. 2d 245, 247, it was stated by Justice Carter, speaking for the Supreme Court of California, that:

"* * * To maintain means 'To hold or keep in any particular state or condition; * * * not to suffer to fail or decline';"

⁵ Chap. 873, Laws of New York, 1934, as amended (Vol. II, Baldwins New York Consolidated Laws, 1948, p. 136 of "Unconsolidated Laws"); Chap. 454, Laws of New York, 1949.

⁶ Counties of the State of New York not wholly within a city are also authorized to impose retail sales taxes. Chap. 278, Laws of New York, 1947, as amended by Chap. 651, Laws of New York, 1948 and Chap. 589, Laws of New York, 1950 (Vol. 3, State Tax Reporter, New York, *supra*, Par. 96-900). There is no State sales tax in New York.

According to the evidence, and the Board's findings of fact insofar as they go, assuming that respondent was a "non-resident", the respondent not only established but maintained a residence in the District prior to purchasing the motor vehicle involved and, accordingly, he was not *exempt* from the excise tax imposed for the issuance of the original certificate of title for it under Sec. 301, Title III, of the 1949 Act.

CONCLUSION

The Board of Tax Appeals was without jurisdiction to hear and determine this appeal, and the District's motion to dismiss on that ground should have been granted. If this Court determines that the Board did have jurisdiction, the Board's decision should be reversed for the reasons stated in Argument II.

Respectfully submitted,

VERNON E. WEST,
Corporation Counsel, D. C.,

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C..

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JOINT APPENDIX

INDEX TO JOINT APPENDIX

	PAGE
Conclusions of Law	6
Decision of Board of Tax Appeals	12
Docket Entries	1
Examination by the Board	14, 17, 18
Findings of Fact	5, 13
Memorandum of Board of Tax Appeals	7
Petition filed with Board of Tax Appeals	1
Proceedings	13
Respondent's Exhibit A (Bill of Sale)	21
Respondent's Exhibit B (New York State Motor Vehicle Registration)	22
Testimony:	
Jack K. McFall	
Direct Examination	14
Cross Examination	16
Examination by Board	14, 17, 18

1

DOCKET

1950

<i>Date</i>	<i>Proceedings</i>	<i>Memorandum</i>
Feb. 13	Informal pet. filed. TP., AA and CC served. Pet. notified to file formal petition.	Excise Tax 1950 \$54.90
" 23	Pet. filed. TP., CC & AA served.	

* * * * *

2

FILED FEB 23 1950

* * * * *

PETITION

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

Docket No. 1185

JACK K. McFALL, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

The above named petitioner petitions for a cancellation of an assessment of taxes against him and alleges as follows:

1. The petitioner is an individual with residence at 2744 32nd Street, Northwest, Washington, D. C.
2. The tax in controversy is an excise tax for the Fiscal Year ending June 30, 1950, and in the amount of \$54.90.
3. The tax was paid by the petitioner under protest on February 9, 1950 (protest confirmed in writing on February 17), as will appear from the attached receipt stamped by the Collector of Taxes, District of Columbia.
4. The assessment of the tax set forth on the attached receipt is based upon the following error: That the petitioner was not at the time of purchase of the automobile in question either a legal or actual resident of the District of Columbia and had not been either a legal or actual resident for a period of over two years.
5. The facts upon which the petitioner relies as the basis of this proceedings are as follows:

The undersigned is a United States Foreign Service Officer who was recently appointed as Assistant Secretary of State for a period not to exceed four years. At the expiration of that time he will be transferred to some other foreign post.

3 When stationed in Greece, as First Secretary of the Embassy, last fall he purchased an Oldsmobile car by correspondence with the Oldsmobile dealer in New York City. Upon the petitioner's arrival in New York from Greece in mid-November, he completed payment on the car, including the New York Sales Tax, registered the car with New York license plates, and drove it to Washington. Inasmuch as the New York tags expired on February 1st, the petitioner's wife applied early in the week of February 6 for District of Columbia plates, which were affixed. Before she could secure the plates, however, she was informed that she must pay \$54.90 District of Columbia Ex-

cise Tax on the automobile. This tax was paid by her under protest.

The petitioner thinks it should be distinctly understood that as a Foreign Service Officer he maintains his legal residence in Indiana, where he owns his home. He also owns a home in Washington, D. C. The petitioner has not resided in Washington since 1947, having served abroad since that time, and hence has had his car registered in each case in the country of his assignment. At the time of the purchase of the car in New York he was not a resident of the District of Columbia, nor was he even domiciled here. His Washington home which had been rented for the period of his absence has just been vacated and was awaiting his return. Under these circumstances the petitioner does not see how it possibly could be contended that he should be held responsible to pay a District of Columbia Excise Tax imposed upon residents of the District of Columbia.

WHEREFORE, the petitioner prays that this Board may hear the proceeding, and remit the tax imposed.

• • • • •



IMPORTANT
READ REVERSE SIDE
DO NOT DESTROY

D.C. INSPECTION
STICKER
141083

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF VEHICLES AND TRAFFIC

(DO NOT WRITE IN THIS SPACE)		EXPIRES, REGISTRATION YEAR ENDING: (DO NOT WRITE IN THIS SPACE)		(DO NOT WRITE IN THIS SPACE)	
TITLE NO. <u>1423527</u>		<u>3-31-50</u>		TAG NO. <u>2481</u>	
(PLEASE PRINT OR TYPE)					
NAME OF OWNER <u>JACK</u>		<u>Mc FALL</u>		PAY COLLECTOR OF TAXES, D. C.	
(FIRST NAME)		(LAST NAME)			
RESIDENCE <u>2744</u>		<u>32 St N.W.</u>			
(NUMBER)		(STREET)			
DESCRIPTION OF MOTOR VEHICLES OR TRAILER					
MAKE <u>Ford</u>		YEAR <u>1944</u>		MODEL <u>4</u>	
SERIAL NO. <u>1115</u>		MOTOR NO. <u>6112911</u>			
WEIGHT <u>3690</u>					
TRANSFER COST					
NEW REGISTRATION FEE \$ <u>54.96</u>					
ORIGINAL REG. FEE \$ <u>1.00</u>					
AMOUNT DUE \$ <u>4.00</u>					
TRANSFER FEE \$ <u>1.00</u>					
EXCISE TAX <u>2745</u> \$ <u>54.96</u>					
TITLE FEE \$ <u>1.00</u>					
REGISTRATION FEE \$ <u>4.00</u>					
INSPECTION FEE \$ <u>1.00</u>					
PERSONAL TAX \$ <u>7.84</u>					
TOTAL AMT. DUE <u>2350</u> \$ <u>68.16</u>					

"This receipt, if stamped by the Collector of Taxes, D.C., is evidence that the person named hereon has been granted a certificate of title for the motor vehicle described hereon and/or said vehicle has been registered and identification tags with the number shown above have been assigned, subject to and in accordance with the conditions on the reverse hereof."

FILED MAY 2 1950

* * * * *

FINDINGS OF FACT and CONCLUSIONS OF LAW

Findings of Fact

1. Petitioner, Jack K. McFall, came to the District of Columbia from Indiana in 1925. Thereafter he served as executive secretary of the Appropriations Committee of the House of Representatives. He lived in the District from 1925 to 1936. In 1936 he bought a house in Maryland and lived in it for a time. He served in the Navy from February, 1942 until January, 1946.

2. After leaving the Naval Service he sold his house in Maryland and bought a house in the District, which he occupied as his home until the late Fall of 1947, when he went to Montreal, Canada, as United States Consul. From Montreal he was transferred to the American Embassy in Greece where he served as First Secretary to the Embassy. He remained there for about nine months and was then ordered home as Assistant Secretary of State in charge of Congressional Relations.

3. Upon leaving Greece he ordered by mail an automobile from a dealer in New York City, to be delivered to him on arrival in New York. He arrived in New York in November,

6 ber, 1949, and remained there one day. The automobile was delivered to him in Yonkers, New York

before he came to Washington, and on the same day or the next day he drove it to Washington, and resumed his dwelling in his house, where he has since lived. Petitioner does not appear to have paid a sales tax or use tax to the State of New York or any political subdivision thereof.

4. Before going to Montreal, he had leased his house in Washington for a two-year term, which expired at about the time he was called back to the United States. The automobile was registered in New York under a registration which expired on January 31, 1950. In February, 1950 he applied to the District of Columbia authorities for a title certificate and registration of the automobile. These authorities would not issue a certificate or a registration without payment of the excise tax under Title III of the District of Columbia Revenue Act of 1949, amounting to \$54.90. Petitioner paid the tax on February 9, 1950, and on February 17, 1950, addressed a letter to the Collector of Taxes, in which he protested the payment of the tax. This letter was received by the Collector of Taxes on February 21, 1950.

5. On February 13, 1950 he appealed to this Board from said assessment.

Conclusions of Law

1. Payment under protest is not required as a prerequisite to an appeal to this Board from the excise tax imposed by Title III of the District of Columbia Revenue Act of 1949; if it were, the protest made by petitioner 12 days after payment of the tax is a sufficient compliance with such prerequisite.

2. At the time the automobile was purchased by petitioner he was a non-resident of the District of Columbia, and was not maintaining a residence in the District, within the meaning of section 6(j)(2) of the District of Columbia Traffic Act, 1925 (D. C. Code 1940, section 40-603) added by section 301 of Title III of the District of Columbia Revenue Act of 1949 (Public Law 76, 81st Congress).

3. The excise tax appealed from was erroneously levied, and petitioner is entitled to a refund thereof.

Decision will be entered for petitioner.

(Signed) Lawrence Koenigsberger
 LAWRENCE KOENIGSBERGER,
Member Sole,
 Board of Tax Appeals for
 the District of Columbia

8

FILED MAY 2 1950

* * * * *

MEMORANDUM

This is an appeal from the levy of an excise tax under section 6(j) of the District of Columbia Traffic Act, 1925 (D. C. Code 1940, sec. 40-603), as added by section 301 of Title III of the District of Columbia Revenue Act of 1949 (Public Law 76, 81st Congress).

(1)

At the hearing the District moved to dismiss the petition upon the ground that the Board does not have jurisdiction, in that the tax was not paid under protest in writing.

In support of this motion, there was cited section 303 of Title III of the District of Columbia Revenue Act of 1949, which provides:

“Any person aggrieved by the assessment of any tax imposed by this title may, within ninety days from the date the person entitled to a certificate of title was notified of the amount of such tax,

appeal to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 3, 4, 7, 8, 9, 10, and 11 of title IX of the Act entitled 'An Act to amend the District of Columbia Revenue Act of 1937, and for other purposes', approved August 17, 1937, as amended, and as the same may hereafter be amended."

Section 3 of the Act of 1937 referred to in the above-quoted portion of the Act of 1949, which will be found in D. C. Code 1940, sec. 47-2403, provides that any person aggrieved by any assessment of any of the taxes therein enumerated may, within ninety days after notice of
 9 such assessment, appeal from such assessment to the Board of Tax Appeals, provided such person shall first pay such tax to the Collector of Taxes of the District of Columbia under protest in writing; and that the mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect to such taxes.

It will be noted that section 303 of the 1949 Act provides for appeals to the Board, "in the same manner and to the same extent" as set forth in the enumerated sections of the 1937 Act, but it does not say that such appeal is subject to the same conditions. The manner and extent of an appeal are one thing and the compliance with conditions precedent is quite another. Furthermore, section 3 of the 1937 Act (Code sec. 47-2403) contemplates written notice of assessment of the tax to be appealed from, mailed to the taxpayer. It is obvious from a reading of section 301 of the 1949 Act that no written notice of assessment mailed to the taxpayer is thereby contemplated. To the contrary, from the fact that that section provides that no certificate of title shall be issued until the tax has been paid in full, may be assumed that no formal assessment is made and mailed to

the taxpayer, but that payment of the tax is simply required before a certificate of title will be issued, on a c.o.d., over-the-counter basis, with an absence of conditions and circumstances conducive to a written protest to accompany payment.

It can be argued that the interpretation of the statute hereby adopted is rather narrow and technical; but the requirement of protest itself is highly technical, and has its roots in ancient customs and practices no longer valid, *Moore Ice Cream Co. v. Rose*, 289 U. S. 373; and there is no reason for giving it a more liberal interpretation than is absolutely required.

10 Furthermore, even if protest were required, it would seem that the payment in this case was made sufficiently under protest, as, within 12 days after payment of the tax, petitioner notified the Collector of Taxes that he protested the payment, *Myers v. District of Columbia*, (D. C. Board of Tax Appeals), 72 Wash. L. Rep. 977; *Saltonstall v. Birtwell*, 164 U. S. 54; *Greenport Basin & Construction Co. v. United States*, 269 Fed. 58, affirmed 260 U. S. 512.

(2)

Coming to the merits of the controversy and the question of whether the tax should have been exacted of the petitioner:

The same statute that imposes the tax here appealed from, also imposes a gross sales tax on sales made in the District of Columbia, and a compensating-use tax with respect to articles used in the District which have been acquired by sales not subject to the gross sales tax either in the District or elsewhere.

By paragraph (j)(2), exemption is granted to the issuance of certificates of title to "motor vehicles and trailers purchased or acquired by non-residents prior to coming into

the District of Columbia and establishing or maintaining residences in the District." It becomes necessary therefore, to ascertain in what sense the words "non-residents" and "residences" were used.

"The word 'resident' (and its antonym 'non-resident') are very slippery words, which have many and varied meanings. Sometimes in statutes, residence means domicile, sometimes, as in the instant case, it clearly does not. When these words, 'domicile' and 'residence' are technically used by persons skilled in legal semantics, their meanings are quite different." *Commissioner v. Swent*, 155 Fed. (2d) 513, 515.

"As 'domicile' and 'residence' are usually in the same place, they are frequently used, even in our statutes as if they had the same meaning, but they are not identical terms, for a person may have two place[s] of 'residence', as in the city and
11 country, but only one 'domicile'. 'Residence' means living in a particular locality, but 'domicile' means living in that locality with intent to make it a fixed and permanent home. 'Residence' simply requires bodily presence, as an inhabitant in a given place, while 'domicile' requires bodily presence in that place [*] and also an intention to make it one's domicile.' " *Matter of Newcomb's Estate*, 192 N. Y. 238, 250, 84 N. E. 950, 954, cited and quoted in *Commissioner v. Swent*, supra.

To the same affect see *Newman v. United States*, ex rel. *Frizzell*, 43 App. D. C. 53, 64 (reversed on other grounds, 238 U. S. 537); *Kennan on Residence and Domicile*, sections 12 and 13. The terms "residence" and "domicile" are fre-

* Persons employed by the Federal Government may retain their domicile in a place other than that in which they live, *District of Columbia v. Murphy*, 314 U. S. 44.

quently used as if they were synonymous, *Kennan on Residence and Domicile*, section 22; *Sweeney v. District of Columbia*, 72 App. D. C. 30, 113 Fed. (2d) 25; Restatement, *Conflict of Laws*, section 9 (e).

In ascertaining the meaning of the word "residence" in a particular statute, the legislative purpose must be kept in view, *Kennan on Residence and Domicile*, sections 10, 11; 17 *Am. Jur.* p. 593. The legislative purpose of Title III of the Act of 1949 is not difficult to ascertain. Title I of that Act imposes a sales tax with respect to sales made in the District of Columbia. The designation of the tax imposed by Title II on sales made outside of the District of Columbia, namely, "compensating-use tax", discloses, if that were necessary, the purpose of that tax, namely, to help retail sellers in the District to compete upon terms of equality with retail dealers in other states who are exempt from any sales tax or any corresponding burden, and to avoid the likelihood of a drain upon the revenues of the District, buyers being no longer tempted to place their orders in other jurisdictions in an effort to escape payment of the tax on local sales, *Henneford v. Silas Masin Co.*, 309 U. S. 577, 581; 129 A. L. R. 223, note. The tax imposed by Title III, although denominated an excise tax, has the same objective as that imposed by Title II. In view of the obvious purpose of Titles II and III to avoid encouragement of purchases out of the District by persons whose normal market would be in the District, namely, persons actually living in the District, as distinguished from persons who might be domiciled therein but actually living hundreds or even thousands of miles away, it seems clear that the words non-residents and residences as used in Title III have reference to actual abiding place, rather than domicile. In this view, the question of whether the petitioner was domiciled in the District or in Indiana, his former home, at the time of his purchase of the automobile, is irrelevant.

The petitioner in this case had, without question, been a resident (in the interpretation of the word here adopted) of the District prior to his appointment to the Consulate in Montreal, but that residence was discontinued upon his taking of his station at that point, and was not resumed until after he came back to the District upon the termination of his service in Greece. Although he continued to own the dwelling in the District, it had ceased to be his residence in the sense of being a place of abode for him. A mere intent to return to the District, in advance of that intent being carried out, was not sufficient to restore a residence which had been discontinued two years earlier.

Petitioner's automobile was acquired by a non-resident prior to coming into the District and establishing and maintaining a residence in the District, within the meaning of the statute, and the tax paid by him should be refunded.

* * * * *

FILED MAY 2 1950

* * * * *

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Board, this 2nd day of May, 1950,

ADJUDGED and DETERMINED, That the assessment of excise tax upon issuance of title to motor vehicle, against petitioner, Jack K. McFall, in the sum of \$54.90, herein appealed from, be, and it is hereby canceled, and the petitioner is entitled to a refund thereof.

* * * * *

14

FILED MAY 26, 1950

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ADDITIONAL FINDING OF FACT No. 6

Upon motion of the respondent to make an additional finding of fact, the Board, on this 26th day of May, 1950, hereby makes the following additional finding of fact:

"6. The New York State registration card for the automobile was dated November 10, 1949, and was signed by petitioner on that date. Opposite the printed word "Address" thereon, "2744 32nd Street, N. W. Washington, D. C." had been typed prior to the time that petitioner signed it.

Petitioner had made a \$500 deposit on the automobile prior to leaving Greece. He paid the balance on November 10, 1949, by means of a check postdated November 14, 1949."

* * * * *

17

PROCEEDINGS

THE BOARD: Proceed.

MR. CHALFONTE: First, I move to dismiss the complaint or petition upon the ground that the Board does not have jurisdiction, in that the tax in question was paid and was not protested; that is, he failed to pay the tax under protest in writing.

THE BOARD: Of course you know what the ruling will be.

MR. CHALFONTE: I just want it on the record.

THE BOARD: Motion denied. Proceed.

* * * * *

MR. CHALFONTE: I admit paragraph 1 of the petition, Your Honor, as I said. As far as paragraph 2 is concerned, I will admit there was an excise tax in the amount of \$54.90. I will have to deny paragraph 3, but I will admit this in relation to paragraph 3, that Mrs. McFall paid the tax on February 9, 1950, but not under protest in writing.

I will further admit in paragraph 3 that the petitioner by letter under postmark dated February 17, 1950, protested the payment of the tax, which letter was received by 18 the Collector of Taxes February 21.

* * * * *

JACK K. McFALL being first duly sworn, testified as follows:

EXAMINATION

BY THE BOARD:

Q. Now, tell me from the beginning, omitting what you have heard as hearsay from your wife. A. * * * I came to Washington back in 1925 and remained continuously in the District from that time until 1947. * * * In 1947 I entered the Foreign Service of the United States Government.

19 Q. What was your job before that? A. I was executive secretary of the Appropriations Committee of the House of Representatives. In 1947 I entered the Foreign Service, after having been gone for about four years during the war in the Navy. We purchased a house, our present house, in 1946.

Q. In Washington? A. In Washington, and we lived in it for something in the nature of eight months before I went into the Foreign Service. I was sent in late fall of 1947 to Montreal as consul. I was transferred directly from there to first secretary of the Embassy in Greece, where I remained for about another period of about nine

months and was then ordered home as Assistant Secretary of State in charge of Congressional relations, in the fall of last year.

Now, the automobiles that I had, and coming down to what this case arises from: One was registered in Canada during my tour there, the other registered in Greece during my tour there. On leaving Greece I sold my car in Greece and ordered by mail from Greece an automobile from a dealer in New York to be delivered to me on arrival in New York.

I arrived in New York, the car was there, I took delivery and I drove—I bought New York license plates in order to get down here—I drove and arrived in Washington and proceeded to occupy my home, which has not been occupied from 1947 on because I had been in the Foreign Service.

* * * * *

20 Q. Well, coming back, tell us about the tag or license of this car. First, did you handle that or did your wife? A. My wife did, at my request. She went down to the District Building and when it came time for the District plates—no. I will tell you what happened. The New York tags we bought when we took on the car in New York expired on, I think it was, the first of March.

Q. Of what year, 1950? A. Of this year, that is right. Then this question of the payment of the excise tax arose when I applied for the tag for the interim between the first of March, which was the expiration date of the New York tag, and the first of April, which was the date on which I picked up the District tags which I now have on my car for this year, and so this excise tax arose when I applied to carry me for that one month between expiration—

Q. It probably would have arisen anyway, in April. A. It would have arisen, maybe, in connection with this, but my

21 whole contention was at the time when I acquired the car I was neither a resident nor domiciled in the District of Columbia, and was not for 2½ years.

* * * * *

26 BY MR. CHALFONTE:

Q. You bought your house in the District here in 1946, is that correct? A. That is correct.

Q. What did you pay for that, Mr. McFall? A. Let's see—\$39,000, I think it was—\$38,000, something of that nature.

Q. And prior to the time that you—from 1925 until 1947 you have resided in the District, is that correct? A. No, sir, resided in Maryland.

Q. Maryland? A. Bought a house in Maryland in 1936 and sold it and bought this house in the District.

Q. And when did you move into the District? A. You mentioned the income tax. I was living in Maryland all during that period, from 1936 until I came to the District and I paid income tax in Maryland.

BY THE BOARD:

Q. When did you come into the District? A. In 1946, and I paid income tax in Maryland all those years, too.

* * * * *

28 BY MR. CHALFONTE:

* * * * *

Q. How long did you remain in New York at the time you arrived? A. When we came from Greece?

Q. Yes. A. One day, I believe. The car was delivered and we came to the District.

29 Q. You drove right down to the District of Columbia? A. That is right.

Q. I will ask you whether or not you applied for dealers' tags in New York. A. We did and they said they could not do that because dealers' tags could not be driven out of New York.

Q. And what was the purpose of applying for dealers' tags in the State of New York? A. My purpose was, when I got to the District of Columbia I would reestablish my residence here, I would apply for District tags, which I did when the New York tag expired.

Q. Now, Mr. McFall, I hand you Respondent's Exhibit A for identification, which purports to be the bill of sale for the vehicle. A. That is it; correct.

MR. CHALFONTE: Would you mark this as Respondent's Exhibit B for identification, please?

(The document referred to was marked as Respondent's Exhibit B, for identification.)

BY MR. CHALFONTE:

Q. Mr. McFall, I hand you Respondent's Exhibit B for identification and ask you if you can identify that. A. Yes, sir. That is the registration.

Q. That is the New York registration for the vehicle in question? A. Correct, sir. As a matter of fact, I think that is the one that was sent to us in Greece. We made all the negotiations by mail for the purchase of this car from Greece to New York.

* * * * *

(The documents heretofore marked Respondent's Exhibits A and B respectively, for identification, were received in evidence.)

* * * * *

32

BY THE BOARD:

Q. Why did you buy the car in New York? A. So I could drive down.

Q. Why didn't you buy it in Washington? A. I say, so we could put all our things in from the ship and drive down.

* * * * *

35 BY MR. CHALFONTE:

Q. One more question, please. Mr. McFall, at the time you purchased this car in New York City, you were living in New York City, were you? A. No, sir. My wife's mother lives in New York.

Q. You just stopped off and bought the car and went direct to Washington? A. That is absolutely correct; stayed overnight—one or two days.

BY THE BOARD:

* * * * *

36 Q. Now, according to the documents before me, you did not pay any tax in New York at all. Now, I might say something, that from my personal experience I have bought in department stores in New York, and avoided paying sales tax by having the merchandise shipped to Washington. Now, it looks to me, off-hand, as if you avoided paying the New York tax by having the car billed to Washington, and if you don't pay a tax here, then you won't be paying any tax anywhere. A. Well, if that's the case, I am completely unconscious of it.

Q. I don't say that you did anything dishonorable; but I think that is what happened, because I notice here the bill is made out to you with the Washington address. A. Yes.

Q. And maybe that enabled you to avoid the New York tax. In other words, since you speak of "equity," your statement would be stronger if you had paid the New York tax. But to get out of the New York tax by coming here, and then to get out of it here because you bought the car in New York—that doesn't seem to me to be equity. A. Well, I see your point, Judge.

* * * * *

37 THE BOARD: All right, I will take this under advisement. If you can produce any evidence in the next four or five days that you paid the New York sales tax, communicate with me, will you?

* * * * *

40 BY MR. CHALFONTE:

Q. Mr. McFall, I hand you Respondent's Exhibit D and ask you if that is your signature that appears on there? A. It is.

Q. In both places? A. Correct.

Q. I will ask you, sir, about when was it you signed that? A. To the best of my recollection, on the 10th of November, 1949.

Q. Whereabouts were you at the time you signed it? A. To the best I can recall, in the office of the Oldsmobile Agency in New York City.

THE BOARD: You were not in Greece?

THE WITNESS: No, sir; I was not.

BY MR. CHALFONTE:

Q. I will ask you, Mr. McFall, whether or not you caused it to have the typewritten information which shows
41 on that registration card, or whether you caused that typewritten information to be placed on that registration card?

THE BOARD: Well, caused what, specifically?

BY MR. CHALFONTE:

Q. Your name is typewritten, the address is typewritten, and Washington, D. C. is typewritten. Did you cause those three lines to be filled out on that registration card?

A. Well, I can't say I caused it to be filled out. I signed it, if that was the case. I don't know—when you say "caused it to be filled out," I am sure I supplied the information.

Q. Did you supply the information? A. I did supply the information.

Q. When did you supply that information, Mr. McFall?
A. I will have to say the same date. I don't recall that. I think it was the same day.

Q. It was not done in Greece, though? A. I believe not. However, it is the same address which I gave after I received notice of my transfer.

THE BOARD: Wait a minute—which you gave to whom?

THE WITNESS: That I gave—well, to everybody, newspapers, magazines, everyone.

BY MR. CHALFONTE:

42 Q. Mr. McFall, I hand you Respondent's Exhibit A, which is the bill of sale for your vehicle, and ask you—I point out to you there is an item of deposit \$500 on the vehicle. Can you tell us when it was that you made that deposit? A. The deposit was made from Greece by check to the Company.

Q. Tell us when that was made? A. Approximately in mid-October.

Q. In what year? A. 1949.

* * * * *



CADILLAC MOTOR CAR DIVISION

GENERAL MOTORS CORPORATION

NEW YORK BRANCH

BROADWAY AT 57TH STREET

NEW YORK 19, N. Y.

RESP'S. EX. *A*N^o 14142 N

14142 N

SOLD TO

MR. JACK K. MC FALL,
STATE DEPARTMENT, 2744 32ND ST, N.W.
WASHINGTON, D. C.

for identification

Bill of Sale

SALESMAN J. A. CLARK.

MAKE	MODEL	NEW USED	MOTOR NO.	SERIAL NO.	BODY NO.	KEY NO.	AMOUNT
OLDS.	76	NEW	6A87729H	496L7985			PRICE OF CAR LAN 2148.00
CONVERTIBLE COUPE EXTRAS: OPTIONAL EQUIPMENT & ACCESSORIES HYDRA. TRANS. GROUP "D" DEL CLOCK., STEER. WHL. ETC. GROUP "Z" EXH EXT., VISOR MIRROR ETC. REAR FENDER PANELS CHROME WHL. RINGS CONDITION AIR HEATER & DEFR. WHITEWALL TIRES DEL. RADIO BLUE CORAL LUSTRE TREATMENT BACK UP LIGHT ANTIFREEZE 5 1/2 QTS WINDS. WASHER AIR AIR CLEANER OIL FILTER TURN SIGNALS						TRANSPORTATION SURCHARGE 83.00 4.00 185.00 20.00 7.00 17.00 16.00 62.00 24.00 28.00 25.00 15.00 1.00 2.00 4.00 9.00 21.00	
						PAID NOV 1 1949 CADILLAC MOTOR CAR DIVISION NEW YORK BRANCH	
						DELIVERED PRICE NEW YORK 2743.23 N. Y. CITY SALES TAX 4.15 LICENSE FEE 10.00 DEL. CHARGE	
						TOTAL CASH PRICE	2757.98
COST OF FINANCING (INCLUDING INSURANCE)							
TOTAL TIME PRICE							
INSURANCE COVERAGE			SETTLEMENT:		DEPOSIT		500.00
FIRE & THEFT					CASH ON DELY.		2257.98
COLLISION—AMT. DED. \$					USED CAR:		
PUBLIC LIABILITY \$			TYPE SERIAL MOTOR				
PROPERTY DAMAGE \$			PAYMENTS:				
TOTAL							2757.98

THE ABOVE PRICES INCLUDE ANY FEDERAL EXCISE TAX IMPOSED BY LAW

RESP'S EX. A

21

STATE OF NEW YORK—DEPARTMENT OF TAXATION AND FINANCE—BUREAU OF MOTOR VEHICLES

9H7851

PASSENGER
VEHICLE

Ann. Fee
\$ 19
Fee Paid
\$ 4

1997001 NO. 10-49 1949
Registration

ISSUED BY THE
BUREAU OF MOTOR VEHICLES
STATE OF NEW YORK

VALID FOR DESCRIBED VEHICLE TO MIDNIGHT JAN. 31, 1950

Print
Name

JACK K. MC FALL

Address

Street and No. 2744 32ND STREET, N.W.

City or
Post Office

(Residence, if Individual, Otherwise Business Address)
WASHINGTON Zone No. State D. C.

4. Year 1949	5. Make of Vehicle OLDSMOBILE	6. Type CV CPE	8. Weight 3690	9. Model 76
10. Cyls. 6	11. Serial Number 496L-7985	12. Engine Number 6A-87729H		

(Sign Name in Full
in Regular Handwriting)

(State if Partner, or Give Title
if Officer of Corporation)

The accompanying plates have been assigned to the above named to be
used on the motor vehicle herein described during 1949 and Jan. 1950.
CLIFFORD J. FLETCHER, COMMISSIONER OF MOTOR VEHICLES

IF VEHICLE IS DISPOSED OF, KEEP THIS STUB
FILL IN REVERSE SIDE TO OBTAIN CREDIT ON NEW REGISTRATION

STATE OF NEW YORK—DEPARTMENT OF TAXATION AND FINANCE—BUREAU OF MOTOR VEHICLES

9H7851

PASSENGER
VEHICLE

Ann. Fee
\$ 19
Fee Paid
\$ 4

1997001 NO. 10-49 1949
Registration
Renewal Stub

ISSUED BY THE
BUREAU OF MOTOR VEHICLES
STATE OF NEW YORK

RESP'S. EX.

LIST CHANGES OF ADDRESS ON OTHER REGISTRATION

Print
Name

JACK K. MC FALL

Address

Street and No. 2744 32ND STREET, N.W.

City or
Post Office

(Residence, if Individual, Otherwise Business Address)
WASHINGTON Zone No. State D. C.

4. Year 1949	5. Make of Vehicle OLDSMOBILE	6. Type CV CPE	8. Weight 3690	9. Model 76
10. Cyls. 6	11. Serial Number 496L-7985	12. Engine Number 6A-87729H		

(Sign Name in Full
in Regular Handwriting)

(State if Partner, or Give Title
if Officer of Corporation)

This stub must be presented with application for 1950 if vehicle for
which accompanying plates have been assigned is not sold during 1949.

IF VEHICLE IS SOLD, FILL IN REVERSE SIDE
AND GIVE THIS STUB TO PURCHASER

45
RESP'S. EX. B

22